E.&.P.H. (194 9) Department.

MS SERIES.

G.O. NO. 3063 PUBLIC HEALTH.

Dated 31st August 1949.

[Despatch Abstract.]

BUILDINGS - Bellary Municipality-Door No. 112/IV Construction by Sri. R.Krishnamurthy-Permission granted by the Bellary Municipal Council. Cancellation of resolution- Notice issued.

Rc.No.C4. 1032/48.

Municipal Office,
Bellary, dated, 26-2-1949.

DIRECTOR OF TOWN PLANNING 3 MAR 1949 MADRAS

From Sri.K.Narashimamurthi, M.A.,
Municipal Commissioner, Bellary.

To

The Secretary to the Government of Madras,
Education and Public Health Department,
Fort St.George, M a d r a s.

ASST. SECRETARY TO GOVERNMENT EDUCATION AND PUBLIC HEALTH 30 APR 1949

Thro' The Director of Town Planning, Madras.
The Chairman,
Municipal Council, Bellary.

Sir,

Sub:- BUILDING RULES - Bellary Municipality - D.No.112/IV ward R.Krishnamurthi - Reroofing the verandah and consequent encroachment - Council's resolution No.709 dated 30-3-48 - Cancellation of resolution - Requested.

Ref:- Director of Town Planning, Madras, L.Dis.2662/48 dated 17-2-49.

One Sri.Rottegal Krishnamurthi Setty applied for permission to re-roof the front verandah of Door No.112/IV ward on 7-7-47 under Building Regulations and necessary permission was granted in this office B.A.No.337/47 dated 3-8-47.

The said individual while reroofing the building, projected the rafters by a foot and half and converted the verandah into two shops by fixing door frames. Since the party violated building rules necessary provisional order and confirmatory order under Section 216 of the Dist.Municipalities Act were issued on 1-11-47 and 1-12-47 respectively. As the party failed to comply with the requirements of the Confirmatory order, orders for demolition was issued on 16-1- and a major portion of the structure was demolished on 18-1-48.

In the meanwhile i.e., on 3-2-48 the party represented to the Council that the construction was made under unavoidable circumstanc and the Council in their Resolution No.709 dated 30-3-48 permitted and recommended to the Director of Town Planning for retention on th encroachment on payment of encroachment fees treating the projection being an encroachment.

The Director of Town Planning in his letter No.2662/48 dated 17-2-49 (copy enclosed) states that the Municipal Council's resolution No.709 in granting permission for the unauthorised and objectionable construction with an encroached balcony is not in order and need not be given effect to, and it is for the party to appeal to the Director of Town Planning under Rule 15 of the Building Rules. He further wants that Government may be moved to cancel the resolution of the Council which is in excess of its power.

I, therefore, request the Government to cancel the resolution No.709 dated 30-3-48 of the Council (copy enclosed) in the light of the circumstances narrated above.

skr/.28.2.a.Exd:-

Commissioner.

F o r w a r d e d.

Chairman M.C.,

N.Dis.No.1082/49. Office of the Director of Town Planning, Old High Court Buildings, 1st Line Beach, Madras.1. Dated 27-4-1949.

Forwarded to Government.
The Municipal file, of pages (41) enclosed.

To
The Secretary to Government
Education & Public Health

=x=

Copy of L.Dis.No.2662/48 dated 17-2-1949 of the ~~Commr~~ Director of Town Planning,Madras.

Sub:- Building Rules - Bellary Municipality - Door No.112 Ward No.IV - Roofing and verandah and consequent encroachment- Instructions - Issued.

Ref:- Your letter Rc.No.C4.1032/48 dated 12-6-48 and 22-10-48.

The Municipal Council's resolution in granting permission for the unauthorised and objectionable construction with an encroached baleony is not in order and need not be given effect to. It is for the party to appeal to the Director of Town Planning under Rule 15 of the Building Rules.

P4 (R)

Government may be moved to cancel the resolution of the Council which is in excess of its powers.

power delegated to the D.T.P

/ true copy /

Proceedings of the Municipal Council, Bellary, passed at its ordinary meeting held on 30-3-48 at the Municipal Office,Bellary.

709. READ petition dated 3-2-48 from Rottegal Krishnamurthi requesting permission to put up projection of about 1½ ft. width as a measure of protection against sun, rain and all weather condition to house No.112/IV ward which was recently demolished by the Municipality.

Also Commissioner's note dated 19-2-48 thereon.

(Adjourned in C.R.No.684 dated 30-3-48).

Res:- PERMITTED AND ENCROACHMENT FEE COLLECTED TO PUT UP PROJECTION NOT EXCEEDING 1½' in width AND RECOMMENDED TO THE DIRECTOR OF TOWN PLANNING.

M.Gangappa,
Chairman M.C.,

/ true copy /

N.Dis/1082/49

Office of the Director of Town Planning Madras D-3-49

Forwarded to Government.

For Director of Town Planning

To

The Secretary to Govt.

H & P.H. Department Madras.

3

E & P.H. (F2)Dept.

Sub:- Building Rules - Bellary Municipality Dr.No.112/IV war
Sri R.Krishnamurthi - Reroofing the verandah and
Consequent encroachment.

Ref:- Letter from the Commr., Bellary Municipality,
No.R.C. C4.1032/48 dated 26th Feb.1949.

Memorandum No.33135-1F2/49 dated 10-5-49

In his Endorsement No. N.dis. 1082/49 dt. 27-4-49, the Director of Town Planning has simply forwarded the letter from the Commissioner read above. The Director is requested to offer his remarks specifically on the proposal of the Commissioner.

To

The D.T.P.

(with the Commr's letter in orgl & the hypl office files)

From
K.N. Unnithan Esq., I.C.S.,
Director of Town Planning,
Old High Court Buildings,
1st Line Beach, Madras I.

To
The Secretary to Government,
Education & Public Health Department,
Fort St. George,
Madras.

L.Dis. No. 2494/49 Dated 27.6.1949.

Sir,

Sub: BUILDING RULES - Bellary Municipality - Door No.112/IV Ward - Sri R. Krishnamoorthi - Reroofing the verandah and consequent encroachment.

Ref: Education & Public Health Memo No.33135-1-F2 P.H., dated 10.5.1949.

The following remarks are offered.

The request of the Commissioner to Government in his letter 1032/48 dated 26.2.49 is to cancel the resolution No.709 dated 30.3.48 of the Council. The case is one of conversion of an existing pial verandah into two shop rooms by fixing door frames within 4' of the street edge. This proposal would contravene rule 9 (2) of the building rules. Attention is invited to the Director of Town Planning's letter Roc.2662/48 at page 11 of file (Flag P). The plan at page 17 of the file may also be perused. Such an erection of shop also effects the ventilation of the house, as the window in front of building is blocked by the shop in the verandah. The resolution of the Council granting permission to such an unauthorised construction violating rule 9 (2) (a) of the building rules is in excess of the powers of the Municipal Council.

Further the Commissioner has simply stated that a major portion of the structure was demolished on 18.1.48. Kind

6 (P)

attention is invit[illegible] to the s[illegible] file, where the [illegible] encroachment A B C [illegible] line A B and side fr[illegible] These contraven[illegible] ventilation of th[illegible].

P3(R) The [illegible] above are also [illegible].

Yours truly.

ks.28.6.

Edn. & P.H.(F2) Deptt.

33135/49 F2

SUB: Buildings - Bellary Municipality-Door No.112/IV - Construction by Sri R. Krishnamurthy - Permission granted by the Bellary Municipal Council - Cancellation of resolution - Notice Issued.

REF: From the Commr., Bellary Municipality, Rc.No.C4-1032/48 dated 26.2.49.
From the D.T.P., L.dis.No.2494/49. dated 27.6.49.

Order/Ms.No. 3063 P.H. dated 31-8-49.

It has been brought to the notice of the Govt. that in July 1947, one Sri R. Krishnamurthy Setty of Bellary was granted permission by the Municipal Commissioner for reroofing the front verandah of Door No.112/IV Ward. While so reroofing the building, he got the rafters projected by a foot and a half and converted the verandah into two shops by fixing door frames within the four feet of the street edge. As the construction violated ~~the Building Rules i.e.~~ Rule 9(2)(a) of the Building Rules and as it also affected the ventilation of the house, the Commr., took action under section 216 of the M.D.M.Act for the demolition of the unauthorised construction. While action was being taken by the Commr., in this regard, the party represented to the Municipal Council that the construction was made under unavoidable circumstances. The Council in its resolution No.709 dated 30.3.48 permitted the construction and also recommended to the D.T.P., the retention of the construction on payment of encroachment fees treating the projection as an encroachment.

2. The action of the council in permitting the construction amounts to granting exemption to the construction from the operation of rule 9(2)(a) of the Building Rules. The power of the Govt. to grant exemptions under Rule 15 of the Building Rules has been delegated only to the D.T.P. and it is only the D.T.P who should exempt the building in question from the operation of the Building Rules. The council has therefore passed the resolution referred to above ~~i.e. Resolution No.709 dated the 30th March 1948~~ in excess of its powers.

3. Under the proviso (1) of section 36 of the Madras District Municipalities Act, 1920, the Bellary Municipal Council is hereby called upon to show cause within a fortnight of the date of receipt of this order why its resolution No.709 dated the 30th March 1948 should not be cancelled.

To

The Commr.,
Bellary Municipality.
thro' the
Chairman.

The D.T.P.

Edn. & P.H.(F2) Deptt.

SUB:- Buildings-Bellary Municipality-Door No.112/IV-Construction by Sri R. Krishnamurthy-Violation of Building Rules.

REF:- From the Commr., Bellary Mpty., Rc.No.C4-1032/48. dated 26.2.49.

From the D.T.P., ~~L.Dis.No~~.L.dis.No.2494/49. d/27.6.49

In July 1947, one Sri R. Krishnamurthy Setty of Bellary was granted permission by the Municipal Commissione for reroofing the front verandah of Door No.112/IV Ward. While so reroofing the building, he got the rafters projecte by a foot and a half and converted the verandah into two shops by fixing door frames within the four feet of the street edge. As the construction violated the Building Rules i.e. Rule 9(2)(a) and as it also affected the ventila tion of the house, the Commr., took action under section 21 of the M.D.M. Act for the demolition of the unauthorised construction. While action was being taken by the Commr., in this regard, the party represented to the council that the construction was made under unavoidable circumstances. The Council in its resolution No.709 dt. 30.3.48 permitted the construction and also recommended to the D.T.P., the retention of the construction on payment of encroachment fees treating the projection as an encroachment. Please se pages 28-40 of the Municipal file at (H) and pp.1-5 of the municipal file at (P).

2. As advised by the D.T.P., the Commr., has requested the Govt. to cancel the resolution of the council a being in excess of its powers. The action of the council in permitting the construction amounts to granting exemption t the construction from the operation of the building Rule 9(2)(a). The power of the Govt. to grant exemptions under Rule 15 of the Building Rules has been delegated only to the D.T.P. and it is the D.T.P. who should exempt the building in question from the operation of the Building Rules. The D.T.P. and the Commr., therefore hold that the council has passed the resolution in excess of its powers. The views the D.T.P. and the Commissioner seem to be correct. Under section 36(1) of the M.D.M.Act, the Ml. Cl. may be called upon to show why its resolution No.709 dated 30.3.4

should not be cancelled by the Govt. as being in excess of its powers.

3. Legal may see for remarks.

KWS 14.7.49 P.T. 16.7.49

19-7-49

29/7

Legal.

E&PH (F2) No 33135-1F2 MH/20/7

LEGAL DEPARTMENT.

This Department agrees with the note of E&PH in paragraph 2.

As regards the question whether the municipal council can invoke s.215(2), the fact that the decision of the council is declared to be "final" by s.215(2) will not affect the powers of the Govt. under s.36 to cancel the resolution. Further, s.215 relates only to the determination of the question whether any addition or alteration is a necessary repair not affecting the position or dimensions of a building or room.

ASSISTANT SECRETARY 9318 21 JUL 1949 LEGAL DEPARTMENT

30.7.49

E&PH

Legal U.O. No 9318/49

1.8.49

E&PH (F2) 58828

Edn. & P.H.(F2) Deptt.

SUMMARIZING NOTE.

In July 1947, one Sri R. Krishnamurthy Setty of Bellary was granted permission by the Municipal Commissioner for reroofing the front verandah of Door No.112/IV Ward. While so reroofing the building, he got the rafters projected by a foot and a half and converted the verandah into two shops by fixing door frames within the four feet of the street edge. As the construction violated the Building Rules i.e. Rule 9(2)(a) and as it a affected the ventilation of the house, the Commr., took action under section 216 of the M.D.M. Act for the demolition of the unauthorised construction. While actio was being taken by the Commr., in this regard, the party represented to the council that the construction was made under unavoidable circumstances. The Council in its resolution No.709 dated 30.3.48 permitted the constructio and also recommended to the D.T.P., the retention of the construction on payment of encroachment fees treating the projection as an encroachment. The action of the council in permitting the construction amounts to granting exemption to the construction from the operation of the building rule 9(2)(a). The power of the Govt. to grant exemptions under Rule 15 of the Building Rules has been delegated only to the D.T.P. and it is the D.T.P. who sh exempt the building in question from the operation of th Building Rules. The D.T.P. and the Commr., therefore ho that the council has passed the resolution in excess of powers and they have requested the Govt. to cancel the resolution referred to above as being in excess of its powers. It is therefore proposed to ask the Council to cause against cancellation of its resolution referred to above under section 36(1) of the M.D.M.Act. Legal Dept. agree with the above view. The draft order below is for approval. The file may be circulated to H.M.(P.H.),

H.M.(Prohibition) and H.M.(L.A.).

KMJ
4.8.49

~~H.C.I. Secy.~~

M
13-8-49

~~S.9.8.49~~

H.M.(P.H) ✓ 18/8

From previous page.

H.M.(Prohtn) OSA 2.8.49

H.M.L.A. 4.8.49